

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

11/14/2022
Grants
[Signature]

UNITED STATES OF AMERICA,

MEMO ENDORSED

v.

Crim. No. 02-743-05

THOMAS CARBONARO,
Movant

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/15/2022

MOTION TO REOPEN THE TIME TO FILE A NOTICE OF APPEAL

Movant respectfully moves the Court seeking to reopen the time to file a notice of appeal pursuant to Rule 4(a) of the Federal Rules of Appellate Procedure. The following is proffered in support thereof.

I. PERTINENT FACTUAL HISTORY OF CASE

A renewed motion for compassionate release was filed by Movant in 2022. This motion was denied by the District Court on August 18, 2022.

At the time of the denial, Movant was housed in FMC Devens in Massachusetts. The institution mail log would indicate that he never received notice that his motion for compassionate release had been denied.¹

Movant did not become aware of the filing until he had been transferred to a different facility and was notified by his daughter that she had been informed that his motion had been denied. This occurred in October 2022.

The instant request to reopen the time to file a notice of appeal ensues.

II. APPLICABLE LAW

Rule 4 of the Federal Rules of Appellate Procedure provides, in relevant part, that “[t]he District Court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal rule of Civil Procedure of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.”

See F.R.App.P. 4(a)(6)(A)–(C).

¹ Movant was transferred from FMC Devens shortly after the Court’s August 18th decision. He remained in transit Brooklyn and Lewisburg for approximately 5-6 weeks.

III. APPLICATION

Movant asserts that the relevant facts dictate that he did not receive notice of the Court's August 18, 2022, Order denying the motion for compassionate release and that the overall facts support reopening of the time to file the appeal.

First, the record indicates that Movant did not receive notice, nor was he aware, of the Court's August 18th decision denying his motion for compassionate release within 21 days after its entry.

Second, the instant motion has been filed within 180 days of August 18th. Furthermore, it has been filed within a reasonable period subsequent to Movant becoming cognizant of the Court's August 18th decision.

Lastly, there is no evidence to suggest that the government would be unfairly prejudiced by the reopening of the time to file a notice of appeal.

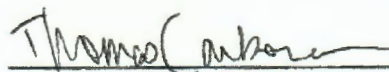
Accordingly, the on this record Movant has made a prima-facie showing that reopening of the time to file a notice of appeal is appropriate.

CONCLUSION

For the foregoing reasons, the motion to reopen the time to file a notice of appeal should be granted.

Respectfully Submitted,

Date: November 4, 2022



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CERTIFICATE OF SERVICE

I certify that the foregoing motion to reopen was affixed with sufficient First-Class U.S. postage and forwarded to the following party:

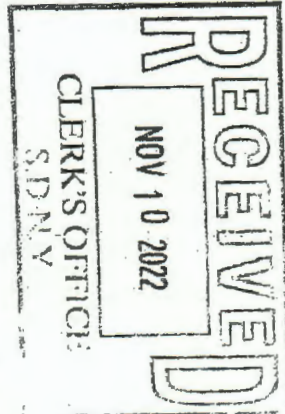
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New York, NY 10007

Date: November 4, 2022



Thomas Carbonaro

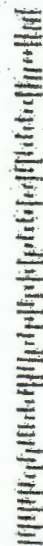
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